validating the provision, not have considered the well-known fact that Sarasota, Florida, is the circus capital of the United States? It is possible, of course, that this very fact may have influenced Florida legislation to give undue advantages to circus owners. If such a situation should be discovered, the court might well have refused to enforce the Florida provision against the artist. But without such factual ascertainment the decision appears to be unjustified. It may well have been that circus people, by uniform stipulation of Florida law, would like to give to their contracts that certainty which the advocates of international uniformity are so anxious to achieve and for which we should certainly strive as long as there are no really important counter-policies.

I have dwelt at some length upon these two topics of characterization and intention of the parties because I believe that Dean Falconbridge's book has such weight and merit that it will have a considerable influence upon future developments in the conflict of laws. In these two major, and also in a few minor, respects I am unable to agree with the learned Dean of Osgoode Hall. I am offering these observations in the hope that he may perhaps consider them when, as he undoubtedly will, he continues to favor the profession with his pertinent discussions of current decisions.

Having stated my points of disagreement I should not like to fail to direct the reader's attention to those parts of the book which appear to me to be particularly helpful and clarifying. In addition to Dean Falconbridge's extensive treatment of the renvoi, the reader will particularly enjoy his clarifying analysis of cases involving property questions. There the author shows not only the necessity of distinguishing between the contract and the property aspects of such transactions, but also how this distinction is to be carried out. He demonstrates the worthlessness for choice of law cases of the distinction between real and personal property and the necessity to distinguish in such cases between movables and immovables; he also furnishes the reader with a reliable guide as to how this distinction is to be made in particular types of cases. There are trenchant discussions of mortgage problems, of cases of family status, especially adoption, and of torts. But to pick out any more special parts would be invidious. Dean Falconbridge's monographs constitute in their totality a coherent and impressive treatise of the conflict of laws. We are grateful that they have now been made so easily accessible in this stately volume.

MAX RHEINSTEIN*

Selected Articles on the Conflict of Laws. By Ernest G. Lorenzen. New Haven: Yale University Press, 1947. Pp. 542. $10.00.

In no field of the law has there been a richer outpouring of distinguished writing in the last five years than in the field of conflict of laws. England and Canada as well as the United States have contributed. We have had from England Martin Wolff's *Private International Law*, published in 1945, a penetrating treatment which draws substance from the soil of Continental scholarship. From Canada we have had this year Dean Falconbridge's *Essays on the Conflict of Laws*, a collection of writings in which precise scholarship is wedded to good sense. In this country we have had Walter Wheeler Cook's *Logical and Legal Bases of the Conflict of Laws*, published in 1942, notable for its distinctive critical method, and Ernst Rabel's *Conflict of Laws: A Comparative*

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Study, published in 1945, the first of a projected series of comparative studies, in which encyclopedic learning has given almost a new dimension to American writing in this field. To this uncommon array must now be added Professor Lorenzen's volume, comprising essays written over a period of thirty-five years. That this collection may stand proudly in the company which it has joined is a just tribute to the life work of a scholar.

The volume deals with most of the crucial issues in conflict of laws: the renvoi, the theory of qualifications or characterization, the choice of law governing torts and contracts, and the problem of out-of-state divorce. There are, in addition, essays on Huber and Story, and several special studies. Perhaps the only major battleground which is not traversed is that of the constitutional aspects of choice of law in the United States.

The essays here included reveal in full sweep the two principal features of Professor Lorenzen's thinking in conflict of laws. He is concerned with demonstrating that a rigid territorial view of the choice of law is neither compelled by the spirit of Anglo-American law nor justified by the rational ends which the discipline of conflict of laws ought to serve. He is concerned also with the broadening of the common-law lawyer's horizon to permit a view of foreign law as a basis of critical and constructive understanding of our own.

A general statement of Professor Lorenzen's critique of the territorial view is found in his classic essay, appropriately placed at the forefront of the volume, entitled "Territoriality, Public Policy and the Conflict of Laws." In other studies here included he has applied his general thesis to the solution of more specific problems. In that endeavor he has stressed, for example, the value of the alternative reference in conflict of laws, which would uphold a consensual transaction in point of formalities and perhaps of capacity where it would be upheld by any one of the possibly applicable laws. In the field of torts he has argued for a less mechanical rule than that of the *lex loci delicti*, and in the field of contracts he has set up a hierarchy of references beginning with the intention of the parties. Professor Lorenzen would, I am sure, be the first to agree that what is needed is a more particularistic study of types of torts and contracts, with a view to working out principles of choice of law that will have relation to the various interests affected.[1] One wishes that Professor Lorenzen had pursued his thesis along such lines, particularly with regard to contracts. He notes with commendation the principles drawn up in 1908 by the Institute of International Law for the treatment of commercial contracts. Those principles reflected a breakdown of the general problem by particular subject matter, as for example contracts of insurance, contracts of employment, contracts of carriers, construction contracts, and others. His comment, however, is that the method thus adopted is not one for judicial decision but rather one requiring "a survey of the whole field of contracts and the mode in which the business is conducted."[2] Whether the task is a judicial or a legislative one, there can be no doubt that it would be immeasurably advanced by the labor of scholars.

In his employment of the materials of foreign law Professor Lorenzen has revived the tradition of Story, although on many matters there are important points of difference between them. It is a laudable characteristic of Professor Lorenzen's thinking that despite his rejection of Story's territorial views he is able, in celebrating the cen-

[1] For attempts to utilize such an approach in the problems of carriers' liability and of interstate defamation see Notes, 54 Harv. L. Rev. 663 (1941); 60 Harv. L. Rev. 941 (1947).

[2] P. 312.

tenary of Story's treatise, to salute that work as the beginning of a new era in the treatment of conflict of laws. It is to be regretted that the present volume does not contain Professor Lorenzen's essays on the French and German conflict of laws,[3] which would no doubt have extended the length of the book unduly unless other sacrifices were made. It is also to be regretted that the volume does not include a short piece published in 1941 on unification between Latin America and the United States in the rules of private international law relating to commercial contracts.[4] That essay, though brief and not fully documented, is a suggestive study in the possibility of securing greater harmony between conflicting systems of conflict of laws by piercing the crust of absolute rules to reach the core of objectives.

While a collection of essays lacks something of the coherence of a systematic treatise, it has one distinctive merit. It constitutes a kind of intellectual autobiography. It would be surprising if a mind as searching as Professor Lorenzen's had failed to take new ground as reflection mounted. Such a movement is best revealed in his essays on the renvoi and the theory of qualifications. Starting out with a rather stiff disapproval of the renvoi and a rather staid insistence that qualification or characterization must be made according to the law of the forum, he shifted to a more qualified position in both these fields. This is not the place for a discussion of these subtleties, however rare it is for a writer on the conflict of laws to resist them. It may perhaps suffice to say that the later position adopted by Professor Lorenzen is one in which common sense is not displaced by the momentum of abstract logic, as is the besetting danger when one turns to these subjects.

This work will continue to leave its mark on the minds of those who are called upon to deal with one of the most elusive and at the same time fundamental areas of the law. Like all important works in the realm of ideas, it represents not a final position but a marker on the road to the accommodation of views. Even those who do not agree with all of Professor Lorenzen's formulations would undoubtedly accept this estimate. For, to change the figure, in the creation of pearls in the life of ideas, it falls to the lot of the same scholar to be now the bivalve, now the grains of sand.

PAUL A. FREUND*

Real Covenants and Other Interests Which "Run with Land". By Charles E. Clark Chicago: Callaghan & Co., 1947. Second edition. Pp. lv, 310.

In reviewing the first edition of Clark on *Real Covenants and Other Interests Which "Run with Land"* for the readers of the *Harvard Law Review*, Professor Chafee, after predicting that the monograph would be of great value to practitioners and law teachers, emphasized the confusion in the law which Judge Clark's monograph had revealed and concluded with the suggestion that reform would not be possible until a statute agreeable to a considerable number of legal thinkers was drafted. He proposed

[3] 36 Yale L.J. 731 (1927); 37 Yale L.J. 849 (1928); 38 Yale L.J. 165 (1928); 39 Yale L.J. 804 (1930).

[4] Uniformity between Latin America and the United States in the Rules of Private International Law Relating to Commercial Contracts, 15 Tulane L. Rev. 165 (1941).

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